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May 24, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Magalie Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-128, File No. NSD-L-99-
34; Flying J Files Petition for Declaratory Ruling, CCB/CPD Docket No. 00-04;
In the Matter of Wisconsin Public Service Commission Order Directing Filings,
CCB/CPD No. 00-01

Dear Ms. Salas:

On May 23, Paul Francischetti of Bell Atlantic, Michael Kellogg, and I met on behalf of the RBOC/GTE Payphone Coalition with Sarah Whitesell, of Commissioner Tristani's Office, to discuss matters in the above-referenced dockets. The attached document reflects the substance of our presentation.

One original and one copy of this letter are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

Enclosure

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RBOC/GTE Payphone Coalition: The Commission's Unfinished Business

May 2000

Unfinished Business

- **Three Issues Urgently Require Commission Attention**
 - **Reseller Problem:** The Commission should clarify carriers' responsibility for paying per-call compensation when a call is billed by a reseller, and it should adopt a new rule to reduce administrative problems
 - **Interim Compensation:** The Commission should immediately adopt an interim compensation plan — Coalition PSPs are still waiting for over \$200 million in compensation
 - **Regulation of Payphone Line Rates:** The Commission should withdraw the Bureau's "New Services Test" Order
- **Once These Issues (and Any D.C. Circuit Remand Issues) Are Resolved, Payphones Can Go on the Back Burner**

Per-Call Compensation — Background

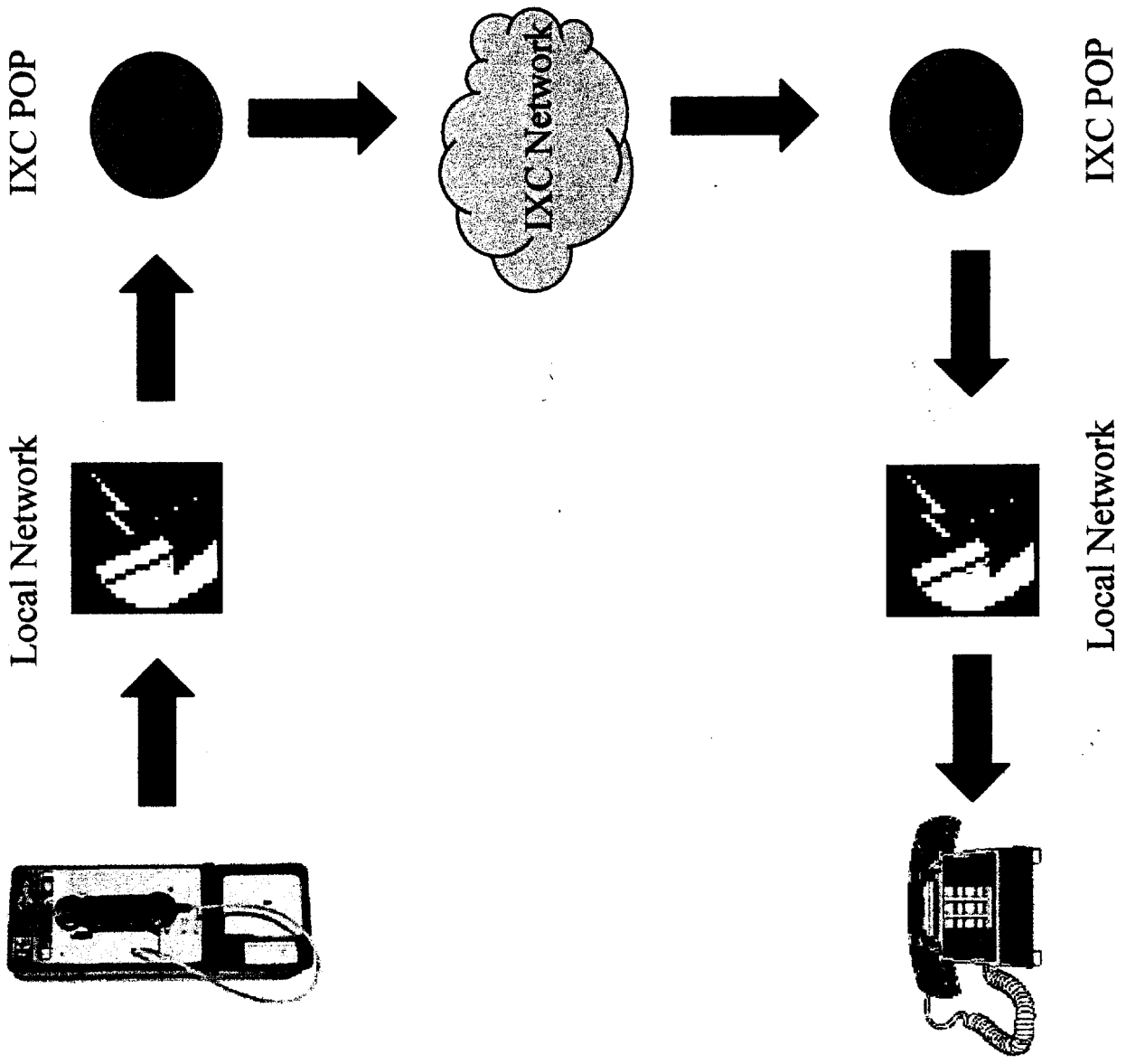
- Per-Call Compensation Is the Sole Source of Compensation for PSPs on Many Calls from Payphones
 - 800 subscriber calls (e.g., 1-800-FLOWERS)
 - 800 access code calls (e.g., 1-800-COLLECT)
 - 101XXXX access code calls
 - Some 0+ and 1+ calls, if not otherwise compensated
- PSPs Are Prohibited From Blocking Access Code Calls by Law. 47 U.S.C. § 222 (“TOCSIA”)
- IXC’s Are Free to Block Calls from Payphones, and Some Do So
- Bargaining Power Is on the IXC’s Side
- As Call Volumes Fall, and IXC’s Shift Traffic to Dial-Around, Per-Call Compensation Increasingly Essential to PSPs’ Survival

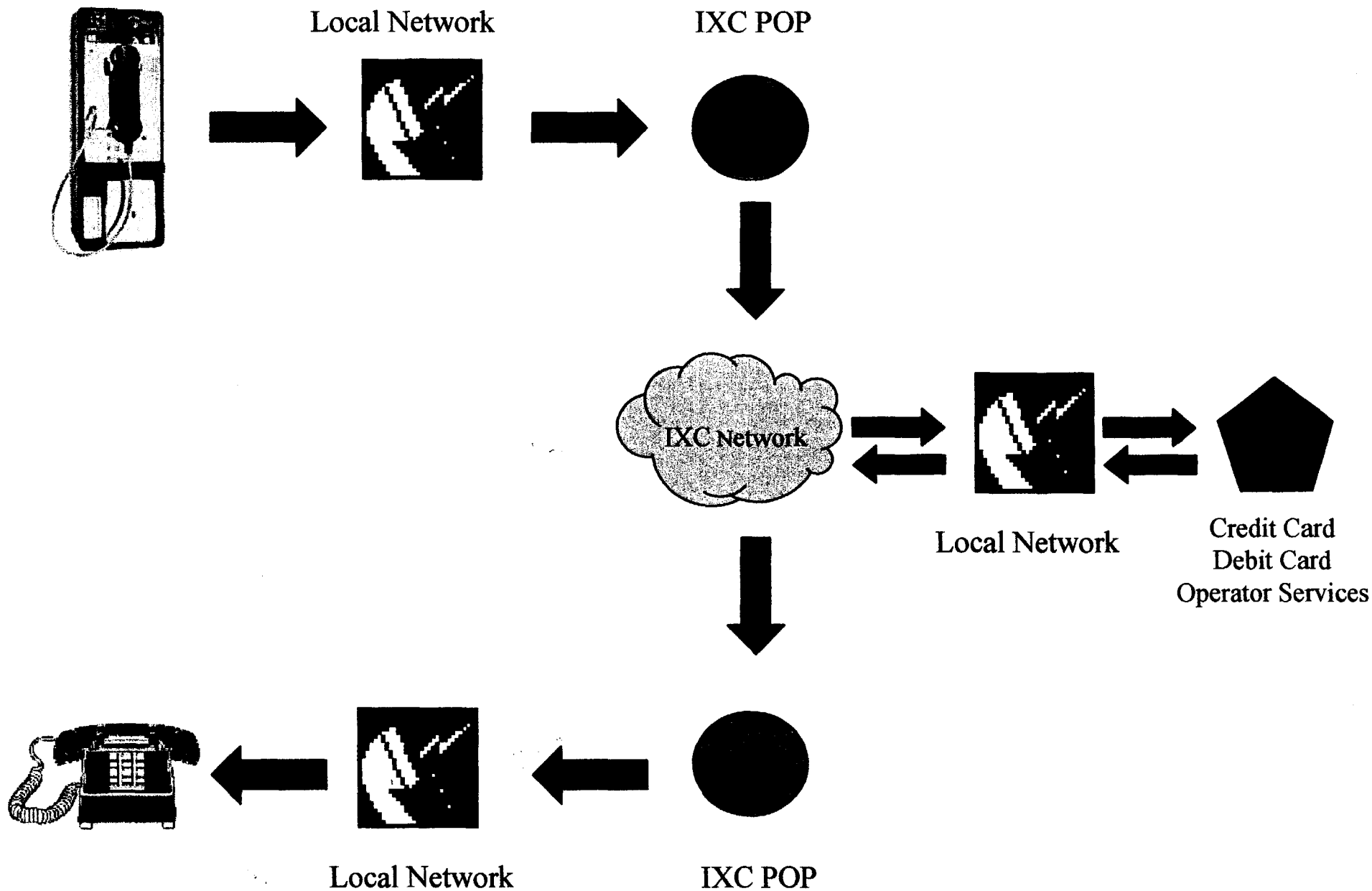
Compensation Shortfall and the Reseller Problem

- **Per-Call Compensation Shortfall for Coalition Members Stands at Tens of Millions of Dollars Annually: Many Major Carriers Underpay; Many Small Carriers Pay Nothing**
- **Reseller Issue Is Most Important Remaining Enforcement Problem**
 - Many major carriers insist that underpayments are the responsibility of facilities based resellers
 - Efforts to identify resellers face major obstacles
 - PSP has no way to tell whether a given call is carried by a reseller
 - IXC's have not identified the calls they pay for
 - IXC's do not identify the resellers responsible
- **PSPs Are Left at the Mercy of IXC's and Resellers**

Root of the Problem: “Switch-Based Reseller” Loophole

- The Basic Rule: Facilities-Based Carriers Pay
 - “[E]very carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider.” 47 C.F.R. § 64.1300(a)
 - “In the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers.” First Report and Order, 11 FCC Rcd at 20586, ¶ 86
- In Limited Circumstances, A Reseller May Take Over Per-Call Payments for the Facilities-Based Carrier
 - Facilities-based carriers are not required to pay compensation when “switch-based resale customers have identified themselves as responsible for paying compensation.” Memorandum Opinion and Order, 13 FCC Rcd at 10915-16, ¶ 38
 - “If a carrier does not maintain its own switching capability, then . . . the underlying carrier remains obligated.” Order on Recon., 11 FCC Rcd at 21277, ¶ 92
- Facilities-Based Carriers Have Taken This Narrow Exception And Run With It





The Commission Should Immediately Clarify the Rule

- Primary Jurisdiction Referral From Flying J Proceeding Provides Another Opportunity — Coalition Petition Is Also Pending
- Clarification Must Be Consistent With Letter and Spirit of Prior Rulings
 - The basic rule: the owner of the first switch is required to pay compensation
 - For obligation to shift to reseller, three conditions must be satisfied
 - Reseller must affirmatively undertake obligation to pay compensation. Memorandum Opinion and Order, 13 FCC Rcd at 10916, ¶ 38
 - IXC must identify the reseller responsible for the particular call. Memorandum Opinion and Order, 13 FCC Rcd at 10916, ¶ 38
 - Reseller must have a switch within the network capable of tracking calls
 - Platform providers — like debit card resellers — do not qualify because they do not use switches in the network. Order on Recon., 11 FCC Rcd at 21277, ¶ 92

The Commission Should Adopt CIC Solution

- On a Going-Forward Basis, Commission Should Provide that CIC Assignee for Particular Call Must Pay Compensation
- The CIC Solution Has Several Advantages Over Current Rules:
 - No more definitional disputes
 - Distinctions among facilities-based carriers, switch-based resellers, and non-switch-based resellers do not correspond to routing and tracking of calls in the network.
 - No dispute over CIC assignee — for each call, there is a unique CIC.
 - CIC associated with each call is available to PSP for verification purposes
 - CIC solution will reduce disputes and improve collection efficiency
 - Top ten CIC assignees account for over 96 percent of calls; top twenty CIC assignees account for over 98 percent of calls.

IXCs' Objections to CIC Solution Are Baseless

- Main Objection Is CIC Assignee May Not Be Able To Identify Completed Calls
 - For 101XXXX access code calls and non-resold subscriber 800 calls, CIC assignee can always identify completed calls
 - For switch-based resellers, CIC assignee has contractual relationship with reseller who can identify completed calls
- The CIC Solution Is Already Working
 - AT&T already uses CICs to track per-call compensation
 - Reconciliation disputes with AT&T are relatively minimal

Interim Compensation: Paying PSPs Their Due

- As of April 15, 1997, LEC PSPs Eliminated Hundreds of Millions in Access Charges Supporting Their Payphones to Qualify For Per-Call Compensation
- Commission Established Per-Phone “Interim Compensation” Regime to Cover April to October 1997 — When Per-Call Compensation Began
- Plan Was Vacated By D.C. Circuit
- Commission Has Not Addressed the Issue After Remand
- Coalition Members Have Been Deprived of Over \$200 Million in Compensation at Current Rates — For Three Years
- Immediate Commission Action Is Essential

D.C. Circuit Vacated Original Interim Compensation Plan

- The Court Vacated the Original Plan for Three Reasons
 - The plan excluded IXC's with revenues under \$100 million from payment obligations
 - The plan divided payment obligations according to IXC's' total toll revenues
 - Commission had no evidence that total toll revenues provided a good proxy for payphone-originated calls
 - The plan excluded certain 0+ and inmate calls from RBOC phones from the interim plan, even though RBOCs received no other compensation for these calls
- The Coalition Would Support Two Possible Approaches to Address the Court's Concerns

Option 1: Use Later Payments As a Proxy

- **Require All IXC's to Pay Compensation for the Interim Period Equal to the Corresponding Payments for the 1998 Period — With Appropriate Adjustments**
 - Commission should determine that payphone call volumes were roughly the same in 1997 and 1998
 - For each payphone in service during both periods, set interim obligation equal to compensation obligation incurred during corresponding period one year later
 - For payphones in service during 1997, but not in 1998, set compensation equal to IXC's per-payphone average
- **Eliminates Need to Divide Per-Phone Obligation Among Carriers**
- **IXCs May Seek Waivers to Reflect Changed Circumstances**

Option 2: 131 Calls Plus 0+ and Inmate

- Commission Could Retain 131 Compensable Calls Per Payphone Figure
 - Has not been challenged and provides a reasonable approximation
- Commission Must Make Adjustment for 0+ and Inmate Calls
 - IXC's should be required to identify payphone for which 0+ or inmate compensation is due for interim period
 - IXC's should pay on actual 0+ and inmate volumes for those payphones
 - If IXC's lack records for specific payphones, should be required to document, in a Commission filing, average number of 0+ or inmate calls for all payphones for the relevant period and pay at that rate
- Divide Obligation by 800 Revenues
 - Two-thirds of compensable calls are 800 calls
 - Distribution of 800 calls generally should provide a good proxy for 800 calls from payphones

Option 2 in Operation

- For April 15-July 1, 1997:

2.5 months x 131 calls/month x \$.238 x share of 800 revenues

Plus 0+ calls

Plus 11.25% interest from October 1, 1997 (Blended Debt/Equity Rate from Prior Commission Orders — Not a Penalty Rate)

- For July 1 - October 6, 1997:

3.2 months x 131 calls/month x \$.238 x share of 800 revenues

Plus 0+

Plus 11.25% interest from January 1, 1998

A Radical Departure: The Common Carrier Bureau's "New Services Test" Order

- Order Concerns Regulation of Intrastate Portion of Payphone Access Lines
 - Payphone Access Lines are functionally equivalent to business lines
 - Usually priced in the same way
 - Have been widely available under state tariffs since mid-1980s
- Payphone Access Lines are Subscriber Lines, Available for Resale, and Subject to EUCL
- CLECs Have Made Significant Inroads into Payphone Access Line Market, Using Both Resale and UNEs

The Bureau Order Requires Provision of Retail Lines at UNE-Like Rates

- New Services Test Is Flexible — An Appropriate Measure of Costs (Determined by the LEC in the First Instance) Plus Overhead
- Bureau Order Ignores Prior Precedent and Requires Payphone Access Lines To Be Priced At TELRIC
 - “[C]osts must be determined by the use of an appropriate forward-looking economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order.” Bureau Order ¶ 9
 - “[F]or purposes of justifying overhead allocations, UNEs appear to be ‘comparable services’ to payphone line services.” Bureau Order ¶ 11
 - UNEs not comparable — comparable services are business lines
- This Requirement Flatly Contradicts the Act and Prior Commission Orders
 - Section 251(c)(3) limits the obligation to provide UNEs to telecommunications carriers: “Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services.” First Report and Order, 11 FCC Rcd at 20615, ¶ 147

The Order Oversteps Commission Jurisdiction

- The Bureau Order Claims Authority to Dictate the Content of State Tariffs
 - Bureau stated that it would “review the incumbent LECs’ [State] rates, terms and conditions” and that it could prescribe a rate “even though [it] may be filed in a state tariff.” Bureau Order ¶ 6 & n.14
 - That claim finds no support in prior Commission orders, violates the Act, and is unconstitutional
- Section 276 Does Not Grant the Commission Authority Over Rates Charged for Payphone Lines, As Opposed to Payphone Compensation
- If the Bureau Were Correct, Commission Would Be Forced to Review Payphone Line Rates in All 50 States

The Commission Should Withdraw the Order

- The Rule Would Virtually Foreclose Facilities-Based Competition in the Market for Payphone Access Lines, a Result Antithetical to the Act
- The Order Was Procedurally Improper
 - The Bureau may not make new law pursuant to delegated authority
 - Parties did not have notice and an opportunity to comment
 - The Order threatens serious disruption at state level
- The Order Is Substantively Wrong
- Commission Should Issue Notice of Inquiry or Proposed Rulemaking to Clarify the Appropriate Commission Role in Overseeing State Payphone Line Rates